

United States District Court
Northern District of California

FILED

2008 MAY -1 A 11: 49

Rosario Marinello

RICHARD W. WIEKING
CLERK
Case # 08-00664-JW
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

v.

Joint Case Management Statement and
~~Proposed Order~~

California Department of Corrections
And Rehabilitation

cbw

Actions Requested:

- 1) Removal of Permanent Withhold, Reinstatement on Eligible Status for the Correctional Counselor I Open Promotional List, and hired within a reasonable time frame.
- 2) Dismissal of Charges pending from Internal Affairs Investigation # CC N-II-SVSP-356-06-A

Events leading to Complaint:

I accepted an offer for the position of Correctional Counselor I at CTF Soledad on March 3rd, 2005. In November of 2005 I completed and passed an exam for the Position of Correctional Counselor I with a respectable score and ranking. I was disqualified after a background Investigation in December of 2005 due to my "suitability" for the position. I immediately appealed this decision based on discrepancies in the report that reflected negatively on my personal history and work performance. According to a letter dated March 23rd, 2006, I was placed on active status and was Eligible for the position of Correctional Counselor I.

I was placed on an Open Promotional List and attended approximately fifteen Interviews. According to the feedback I received from panel members, I completed the interviews in a reasonably efficient manner. As of February 20th, 2007 I was still listed as Eligible for Correctional Counselor I by the Department of Corrections & Rehabilitation Certification Unit. On May 10th, 2007 I received a letter stating that I was no Longer Eligible.

Principle Legal Issues:

Passed Exam/ Exceeded Qualifications:

I have exceeded the minimum qualifications; completed the entire curriculum for a Masters of Business Administration Degree from an accredited University, and graduated with honors; I was employed with Department of Corrections at the Correctional Training Facility in Soledad from 1986 until 1993 as a Correctional Officer. During the seven years my performance ranged from standard to excellent, and did not have any negative Performance Evaluations or written Letters of Instruction. I was also a member of the Special Emergency Response Team for five years which requires a high degree of achievement, skills, conduct, and decision making.

Performance Evaluations Not Completed:

The Employment Inquiries for CCI state that I must submit a copy of my most recent Performance Evaluation with my application in order to interview; I did not receive any Employment Evaluations for a two year period from November 2003, until November 2005. Not having a recent Performance evaluation during this period gave me a disadvantage in the interview process. In comparison with my co-workers during that period my performance was between standard and outstanding.

Improper Use of Information in a Background Investigation:

The Adverse Action (2003-ERO-019) should not have been in my personnel file according to the stipulations in *SPB case # 04-0650. This report should not have been used against me in a negative manner in my background Investigation as mentioned in the Confidential Information Transmittal dated 11/29/2005.

There are discrepancies in an Adverse Action dated February 28th, 2003, and several other items that were used negatively in my background investigation. All derogatory reports were removed from my personnel file prior to May of 2007.

The Confidential Information Transmittal also contains bias interpretation concerning my Integrity and Employment history.

Not Given Representation from Bargaining Union According to Agreement:

At the SPB hearing on June 8th, 2004, the Local labor union did not provide me with proper representation according to the bargaining Union Agreement for Disciplinary Action concerning report # 2003-ERO-019. A letter dated June 2nd, 2004 from Stationary Engineers, Local 39 states that they withdrew from my representation in this matter. There were several other incidences in which I was not given Due Process according to the Bargaining Union Agreement.

False Allegations:

Allegations in Investigation # CC N-II-SVSP-356-06-A are not correct. I was also not given an opportunity for proper representation in this manner. The allegations have caused an invasion of interest in my reputation. This matter must be cleared immediately.

On April 30th, 2008 I spoke with Enedelia Donnelly, the Salinas Valley State Prison Litigation Coordinator. I informed her of the Case Management Conference and the required filing of a Joint Statement Due on Friday May, 2nd, 2008. After we spoke I faxed her copy of the Case Management Conference Notice.

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in dismissal of my claims.

Rosario Marinello

Rosario Marinello

5/1/08

Date